

REMARKS/ARGUMENTS

Amendments are made to the specification to correct errors and to clarify the specification. No new matter has been added by any of the amendments to the specification.

Claims 1, 2, 5-10, 13-16, and 19-26 are pending in the present application. Claims 3, 4, 11, 12, 17, and 18 are canceled. Claims 1, 5, 8, 9, 13, 15, 19, and 20 are amended. Claims 21-26 are added. Reconsideration of the claims is respectfully requested.

I. Telephonic Interview with Examiner Lin and Primary Examiner Ali on October 3, 2006

Applicants thank Examiner Lin and Primary Examiner Ali for the courtesy extended to Applicants' representative during the October 3, 2006 telephonic interview. During the teleconference, the Examiners and Applicant's representative discussed proposed independent claim amendments to distinguish the present invention from the cited prior art references and to overcome the §101 rejection of claims. No agreement was reached between the Examiners and Applicant's representative during the interview. The substance of the interview, as well as additional reasons that the claims are not unpatentable, is summarized in the remarks of Sections II and III, which follow below.

II. 35 U.S.C. § 101, Claims 15-20

The Examiner rejects claims 15-20 under 35 U.S.C. §101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

In rejecting the claims, the Examiner states:

Claims 15-20 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 17, lines 10-20, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g. disk, memory) and intangible embodiments (e.g. radio frequency, light wave). As such, the claims are not limited to statutory subject matter and are therefore non-statutory. The claim will be favorably considered if "storage media" replaced the word "medium" in the claims.

Office Action dated July 5, 2006, page 2.

The Examiner alleges that "[c]laims 15-20 are not limited to tangible embodiments." Office Action dated July 5, 2006, page 2. In addition, the Examiner alleges that the computer readable medium recited in independent claim 15 of the present invention includes both tangible and intangible embodiments as defined in the specification on page 17, lines 10-20. Office Action dated July 5, 2006, page 2. However, no basis exists for holding a computer program product claim as non-statutory because the computer readable medium may be allegedly intangible.

The Manual of Patent Examining Procedure ("MPEP") states in Section 2106 Patentable Subject Matter - Computer-Related Inventions (I) that "[c]omputer-related inventions' include inventions implemented in a computer and inventions employing computer-readable media." Moreover, the MPEP states:

... "[F]unctional descriptive material" consists of **data structures** and computer programs **which impart functionality when employed as a computer component**. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 U.S.P.Q.2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 U.S.P.Q.2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 U.S.P.Q.2d at 1760 (claim to a data structure *per se* held nonstatutory). [Emphasis added].

MPEP, 2106 (IV)(B)(1).

The present invention recited in claim 15 is clearly functional descriptive material because it imparts functionality when employed as a computer component. Further, the functional descriptive material of claim 15 is recorded on "some" computer readable medium.

In the context of the MPEP passage above, the term "some" means "any." The MPEP makes no distinction between one type of media that is considered to be statutory and another type of media that is considered to be non-statutory. To the contrary, the MPEP states that as long as the functional descriptive material is in "some" computer readable medium, it should be considered statutory. The only exception is functional descriptive material that does not generate a useful, concrete, and tangible result, for example, functional descriptive material composed completely of pure mathematical concepts that provide no practical result. The present invention recited in independent claim 15 provides a useful, concrete, and tangible result for saving session data by placing session data associated with a program in a file in a selected location in response to a closing of a session for the program, wherein the session data includes memory segments related to the session for the program and process information related to the session for the program and associating an identification with the stored file to identify the stored file in the selected location. Consequently, the present invention as recited in claim 15 is not some disembodied

mathematical concept or abstract idea. Therefore, claim 15 is directed to functional descriptive material that provides a useful, concrete, and tangible result and is embodied on “some” computer readable medium. Thus, independent claim 15 recites statutory subject matter.

Furthermore, even if, for the sake of argument, claim 15 covers transmission-type media, or carrier waves and signals, the allegation that transmission-type media is “intangible” is incorrect. The term “tangible” is not limited to elements that may be perceived only by the sense of touch. The term “tangible” refers to anything that is capable of being perceived, precisely identified or realized by the mind, or capable of being appraised at an actual or approximate value (see Merriam-Webster Online Dictionary Definition, copy attached). In other words, something is “tangible” if it is possible to verify its existence. Thus, “tangible” does not require that the element be “touchable” but merely “perceivable.”

Transmission-type media, or carrier waves and signals, are perceivable, able to be precisely identified or realized by the mind, and are capable of being appraised. Computer readable media must inherently be “perceivable;” otherwise, the computer readable media would not be computer readable or computer usable. In other words, transmission-type media carrier, or waves and signals, are measurable, readable, and usable by appropriate devices for measuring, reading, and using such media, waves and signals. Thus, transmission-type media, or carrier waves and signals, are “tangible” despite the allegation made in the Office Action to the contrary. Consequently, even if there were some MPEP requirement that the media be “tangible,” which there is not, claim 15, as recited, would still meet that requirement. Hence, the present invention recited in claim 15 is directed to statutory subject matter.

Therefore, based on the MPEP and applicable case law above, the Examiner has no basis for holding claim 15 to be non-statutory. Claims 16-20 are dependent claims depending on independent claim 15. As a result, claims 16-20 also recite statutory subject matter at least by virtue of their dependence on independent claim 15. Accordingly, the rejection of claims 15-20 as being directed to non-statutory subject matter has been overcome.

III. 35 U.S.C. § 103, Obviousness, Claims 1-20

The Examiner rejects claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over Graham Mayor, *Automatically Backup Word Documents*, 10/18/2003, http://gmayor.com/automatic_numbering_documents.htm (“Mayor”) in view of WindowsITPro, *More on Autosave*, 6/2003, <http://www.windowsitpro.com/Windows/Article/ArticleID/38842/38842.html> (“WindowsITPro”). This rejection is respectfully traversed.

Dependent claims 3, 4, 11, 12, 17, and 18 are canceled by this Response to Office Action. As a result, the rejection of these claims under 35 U.S.C. §103(a) is now moot. However, the features of canceled claims 3, 11, and 17 are incorporated into independent claims 1, 9, and 15, respectively.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. §103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). In this case, the Examiner has not met this burden because all of the recited features of these claims are not found in the cited prior art references as believed by the Examiner. Therefore, the combination of Mayor and WindowsITPro will not reach the presently claimed invention recited in these claims.

Amended independent claim 1 of the present invention, which is representative of amended independent claims 8, 9, and 15 with regard to similarly recited subject matter, reads as follows:

1. A method in a data processing system for saving session data, the method comprising:
 - responsive to a closing of a session for a program, placing session data associated with the program in a file in a selected location to form a stored file, wherein the session data includes memory segments related to the session for the program and process information related to the session for the program; and
 - associating an identification with the stored file to identify the stored file in the selected location.

With regard to claim 1, the Examiner states:

As to claims 1, 9, and 15, Mayor discloses a system with methods /means / system in a data processing system for saving session data (backup word documents, title), the method comprising: responsive to a closing of a session for a program (save document, page 2, paragraph 3), placing session data associated with the program in a file in a selected location to form a stored file (define backup path and file name, page 2, paragraph 5, "Sub SaveToTwoLocations"); and associating an identification with the stored file to identify the stored file in the selected location (backup file name with path, page 2, paragraph 5, "strFileB").

Mayor discloses the elements of claims 1, 9, and 15 as noted above but does not explicitly disclose saving data while closing a session.

WindowsITPro discloses automatically save files when closing Word (paragraph 2, lines 1-2).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify Mayor's disclosure to include Autosave when closing Word as taught by WindowsITPro for the purpose of avoiding existing Word without saving the work (paragraph 1, WindowsITPro). The skilled artisan would have been motivated to improve the invention of Mayor per the above such that any modification made on document will be saved automatically on closing1 exiting from Word (paragraph 2, WindowsITPro).

Office Action dated July 5, 2006, pages 3 and 4.

Mayor teaches a method to automatically backup Word documents. Mayor, page 1, paragraph 1. In addition, Mayor teaches that:

...Word has no integral means of automatically saving the current document, nor of backing-up the current document. What it does have is an option to save AutoRecover information after a specific and configurable interval and an option to save a backup copy of the **previously saved** version of the document with the default file extension of WBK (and although there is no reason to do so, Word also allows the option to change this extension to the user's choice). This is not a true backup in as much as it is not a copy of the **current version** of the document.

The way to achieve a true backup is to save the document to two separate locations, however, because of the way Word creates temporary files in the workspace, and the unpredictability of the document size, **these locations must never be on removable media - particularly floppy discs**. Saving to such media is one of the main causes of document corruption (and thus loss of your work!).

You can achieve a true backup by means of vba, and the following code will do the trick:

```
Sub SaveToTwoLocations()  
Dim strFileA, strFileB, strFileC  
ActiveDocument.Save  
strFileA = ActiveDocument.Name  
'Define backup path shown in blue below  
strFileB = "D:\My Documents\Word Backup\Backup " & strFileA  
strFileC = ActiveDocument.FullName  
ActiveDocument.SaveAs FileName:=strFileB  
ActiveDocument.SaveAs FileName:=strFileC  
End Sub
```

The macro uses the FileSave function to save the document, and allow you to name the document if a new document. The name is then stored and the document saved to the defined backup location - **D:\My Documents\Word Backup** in this example - though the code may easily be changed to reflect your own preference.

Mayor, page 1, paragraph 1, page 2, paragraphs 3-5, and page 3, paragraph 1, respectively.

In contrast, as amended, claim 1 recites a method for saving session data by placing session data associated with a program in a file in a selected location in response to a closing of a session for the program, wherein the session data includes memory segments related to the session for the program and process information related to the session for the program. In other words, amended claim 1 recites saving session data in a file, which includes memory segments and process information related to the session. Mayor makes no reference to saving memory segments and process information related to the session. Mayor only teaches that Word documents are backed up and does not teach or suggest the contents of the backup other than the Word document itself.

This amended claim 1 language is incorporated from the features of canceled dependent claim 3. In rejecting canceled claim 3, the Examiner states, "...Mayor discloses wherein the session data includes memory segments related to the session for the program and process information related to the session for

the program (both word document data and properties are saved, page 2, paragraph 5).” Office Action dated July 5, 2006, page 5. As shown in the excerpts from the Mayor reference above, Mayor does not teach or suggest the components of the backup for the Word document, but only that the Word document is backed up. Even if, for the sake of argument, Mayor teaches that “both word document and properties are saved” as the Examiner alleges, which it does not, the document properties are merely attributes or characteristics of the document, such as title, author, type, location, size, number of pages, paragraphs, lines, words, and characters of the document and when the document was created, modified, and accessed.

However, claim 1 recites that the session data includes memory segments and process information related to the session. By way of example, memory segments include all data contained within the memory that was created or used by the program, such as the document, along with its redo and undo edit information and clipboard information, and the code used to execute the document program. Process information includes all data needed to recreate the environment for the session, such as processor register states and identification of threads used to execute the program. Specification, page 13, line 15 – page 14, line 15 and page 16, lines 8-14. Hence, document properties, which include only a document’s attributes, are not analogous to session data, which includes memory segments and process information as recited in amended claim 1. Therefore, Mayor does not teach or suggest that “the session data includes memory segments related to the session for the program and process information related to the session for the program” as recited in amended claim 1.

Furthermore, the WindowsITPro reference also does not teach or suggest the above-recited claim 1 feature, nor does the Examiner cite to any section of WindowsITPro that allegedly does so. The Examiner only cites the WindowsITPro reference for disclosing the automatic saving of a file when a user closes a Word document. Office Action dated July 5, 2006, page 4. Consequently, Mayor does not teach or suggest that “the session data includes memory segments related to the session for the program and process information related to the session for the program” as recited in amended claim 1 either.

Because neither Mayor nor WindowsITPro teach or suggest saving session data that includes memory segments and process information related to the session for the program as recited in amended independent claim 1, the combination of Mayor and WindowsITPro cannot teach or suggest this recited feature. Hence, the combination of Mayor and WindowsITPro does not teach or suggest all features recited in amended claim 1 of the present invention. Accordingly, the rejection of independent claim 1 as being unpatentable over Mayor in view of WindowsITPro has been overcome.

In view of the arguments above, amended independent claims 1, 8, 9, and 15 are in condition for allowance. Claims 2, 5-7, 10, 13, 14, 16, 19, and 20 are dependent claims depending on independent claims 1, 9, and 15, respectively. Consequently, claims 2, 5-7, 10, 13, 14, 16, 19, and 20 also are

allowable, at least by virtue of their dependence on allowable claims. Furthermore, these dependent claims also contain additional features not taught by Mayor and WindowsITPro.

For example, dependent claim 6 of the present invention, which is representative of dependent claims 14 and 20, reads as follows:

6. The method of claim 5, wherein the restoring step includes:
initiating execution of the program using the session data in the stored file.

With regard to claim 6, the Examiner states:

As to claims 6, 14, and 20, Mayor discloses the method of claim 5, wherein the restoring step includes: initiating execution of the program using the session data in the stored file (word document properties is saved with the document, select the document will initiate the program and document, page 1, paragraph 2).

Office Action dated July 5, 2006, page 5.

As shown above, the combination of Mayor and WindowsITPro does not teach or suggest saving session data that includes memory segments and process information related to the session for the program as recited in amended claim 1. Since Mayor and WindowITPro do not teach or suggest saving session data that includes memory segments and process information related to the session for the program as recited in amended independent claim 1, then Mayor and WindowsITPro cannot teach or suggest “initiating execution of the program using the session data” as recited in dependent claim 6. Therefore, Mayor and WindowsITPro do not teach or suggest this recited feature of dependent claims 6, 14, and 20.

Accordingly, the rejection of claims 1, 2, 5-10, 13-16, 19, and 20 under 35 U.S.C. §103(a) has been overcome.

IV. Added Claims 21-26

This Response to Office Action adds dependent claims 21-26. Support for the features recited in added claims 21, 23, and 25 may be found in the specification on page 13, lines 15-30 and page 16, lines 8-14. Support for the features recited in added claims 22, 24, and 26 may be found in the specification on page 14, lines 1-15. Added claims 21-26 also are allowable at least by virtue of their dependence upon allowable independent claims 1, 9, and 15. Furthermore, these dependent claims also contain additional features not taught or suggested by the cited prior art references used to reject the claims above.

For example, added dependent claims 21 and 22 of the present invention, which are representative of added dependent claims 23, 24, 25, and 26, read as follows:

21. The method of claim 1, wherein the memory segments include code segments and data segments, and wherein the code segments include code used to execute the program so that if the program were deleted from the data processing system a user is still able to view and edit the stored file, and wherein the data segments are all information created by the program that includes a current document, undo and redo edit information, and clipboard information for the session.

22. The method of claim 1, wherein the process information is all information needed to recreate the environment for the session that includes register states in a processor and an identification of threads used to run the program.

As shown in Section III above, Mayor and WindowsITPro do not teach or suggest saving session data that includes memory segments and process information related to the session for the program as recited in amended claim 1. Because Mayor and WindowITPro do not teach or suggest saving session data that includes memory segments and process information related to the session for the program as recited in amended independent claim 1, Mayor and WindowsITPro cannot teach or suggest that “the memory segments include code segments and data segments, and wherein the code segments include code used to execute the program so that if the program were deleted from the data processing system a user is still able to view and edit the stored file, and wherein the data segments are all information created by the program that includes a current document, undo and redo edit information, and clipboard information for the session” and “the process information is all information needed to recreate the environment for the session that includes register states in a processor and an identification of threads used to run the program” as recited in dependent claims 21 and 22. Therefore, Mayor and WindowsITPro do not teach or suggest these recited features of dependent claims 21 and 22.

Accordingly, Mayor and WindowsITPro, neither individually, nor in combination, teach nor suggest all claim features recited in added dependent claims 21-26.

V. **Conclusion**

It is respectfully urged that the subject application is patentable over the cited prior art references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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Merriam-Webster Online Dictionary

Thesaurus


tangible

2 entries found for **tangible**.
To select an entry, click on it.

tangible[1,adjective]
tangible[2,noun]

Go

10/156,128
Aus920031019US1

Main Entry: **¹tan·gi·ble** 

Pronunciation: 'tan-j&-b&l

Function: *adjective*

Etymology: Late Latin *tangibilis*, from Latin *tangere* to touch


1 a : capable of being perceived especially by the sense of


touch : **PALPABLE** **b** : substantially real : **MATERIAL**

2 : capable of being precisely identified or realized by the mind <her grief was *tangible*>

3 : capable of being appraised at an actual or approximate value <*tangible* assets>

synonym see **PERCEPTIBLE**

- **tan·gi·bil·i·ty**  /'tan-j&- 'bi-l&-t&/ *noun*

- **tan·gi·ble·ness**  /'tan-j&-b&l-n&s/ *noun*

- **tan·gi·bly**  /-b&l/ *adverb*